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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,143	08/20/2004	Stephen Watkins	056222-5059	5717
9629 7590 07/26/2007 MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004			EXAMINER ELHILO, EISA B	
			ART UNIT 1751	PAPER NUMBER
			MAIL DATE 07/26/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/505,143

Applicant(s)

WATKINS ET AL.

Examiner

Eisa B. Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4 and 7-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4 and 7-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

1 This action is responsive to the amendment filed on July 12, 2007.

2 A request for continued examination under 37 CFR 1.114, including the fee set forth in
37 CFR 1.17(e), was filed in this application after final rejection. Since this application is
eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e)
has been timely paid, the finality of the previous Office action has been withdrawn pursuant to
37 CFR 1.114. Applicant's submission filed on 7/12/2007 has been entered.

3 The cancellation of claim 6 is acknowledged. Pending claims are 4 and 7-11.

Claim Rejections - 35 USC § 102

4 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the
basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Dubief et al. (US 6,190,676 B1).

Doubief et al. (US' 676 B1) teaches a process for treating and protecting hair by applying to the hair a dyeing composition comprising ceramide and psedoceramide (ceramide 2) (bishydroxyethyl biscetyl malonamide) as claimed in claims 4 and 7-9 (see col. 6, lines 23-26, col. 7, line 60 and col. 8, lines 30-32 and 43-47), wherein the amounts of ceramide in the composition is ranging from 0.005 to 3% (see col. 8, line 22). Dubief et al. (US' 676 B1) teaches all the limitations of the instant claims. Hence, Dubief et al. (US' 676 B1) anticipates the claims.

Claim Rejections - 35 USC § 103

5 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubief et al. (US 6,190,676 B1).

Dubief et al. (US' 676 B1) teaches a process for treating and protecting hair by applying to the hair a dyeing composition comprising ceramide (see col. 8, lines 43-47) wherein the ceramide compounds are presented in the composition in the amounts of 0.005 to 3% which are effective amounts and overlapped with the claimed amounts as claimed in claims 10-11 (see col. 8, lines 18-22).

The instant claims differ from the reference by reciting a composition comprising specific percentage amounts of the ceramide compounds.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate such a composition for treating hair by optimizing the amounts of the ceramide compounds in the composition in order to get the maximum effective amounts of the ceramide compounds in the composition. Such a modification would be obvious because Dubief et al. (US' 676 B1) clearly teaches that the concentration of the ceramide compounds can be vary from 0.005 to 3% (see col. 8, lines 18-22) and wherein the amounts suggested by the reference are overlapped with the claimed amounts, and, thus a person of the

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ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

Response to Applicant's Arguments

6 Applicant's arguments filed 7/12/2007 have been fully considered but they are not persuasive.

Applicant argues that the reference does not teach or disclose the claimed methods.

The Examiner respectfully disagrees with the above argument because Dubief et al. (US' 676 B1) clearly teaches and discloses a cosmetic composition comprising ceramide compounds and wherein this composition can be used as a dyeing composition for hair as described above. Therefore, Dubief et al. teaches all the limitations of the instant claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR

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system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eisa Elhilo/
Primary Examiner, A.U. 1751

July 24, 2007